

## REMARKS

In the present application, claims 1 – 22 were examined and rejected. In response, Applicants are submitting the following remarks. In view of the following remarks, Applicants respectfully request reconsideration of the application.

### Rejection Under 35 U.S.C. §112

In paragraph 2, the Examiner rejected claims 1 – 22 “under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.” Applicants traverse this rejection.

35 U.S.C. §112 requires that the specification contain a written description of the invention in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, to make and use the same. In the previous response (mailed November 24, 2004) to the Office Action of August 26, 2004, Applicants had “amended the specification in order to incorporate terminology that is more standard in the art. In particular, the element “insert 304” is amended to read “insert stud body or locking stud body 304.” Additionally, the element “grommet 312” is amended to read “grommet or insert 312.” No new matter is added by these amendments to the specification – *present elements are only being retermed.*” (November 24<sup>th</sup> response, pg. 11, para. 2; see [www.tonepros.com](http://www.tonepros.com) for standard terminology) It should be note that 37 C.F.R. §1.121(a) 5 requires the “disclosure must be amended... to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings. As such, Applicants are merely complying with this requirement.

As a result of these retermed elements, “amendments are also made to the claims to conform the claim elements to the specification.” (November 24<sup>th</sup> response, pg. 11, para. 3). That is, the claims were amended in order to utilize the same terms that are now present in the specification. In this regard, claims 1 – 22 are fully in compliance

with 35 U.S.C. §112, first paragraph, when the claims are taken in conjunction with the retermed elements which are now more standard in the art.

The Examiner considered the retermed elements as new limitations and new matter because an insert is "to put into, between, or among" and a locking mechanism is defined as a "device that is used to hold, close, or secure." (Office action, para. 2.) However, Applicants are calling the element an "insert stud body or locking stud body." The insert stud body or locking stud body 304 has a dual function as seen in FIG. 3. The insert stud body or locking stud body 304 is inserted into a body of an instrument via a threaded bottom portion 306 while providing a locking mechanism via a clamping function of the plate 310 and the mounting stud 302 (when the mounting stud 302 is coupled via the aperture portion 308). Therefore, Applicants do not believe there is any discrepancy in the name of this element. Furthermore, the Applicants may act as their own lexicographer through the course of the specification and prosecution history. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366-67 (Fed. Cir. 2002).

With regard to "grommets and inserts," these two terms are also appropriate. As seen in, and described in conjunction with, FIGs. 3 and 5, the grommet 312 is inserted into the instrument body and receives a portion of the insert stud body or locking stud body 304. Because the grommet is, itself, inserted into the instrument body, it is appropriate to call element 312 a "grommet or insert." Once again, the Applicants may act as their own lexicographer. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366-67 (Fed. Cir. 2002).

Because Applicants merely renamed or retermed original elements of the application, no new matter is added by way of the amendments of November 24, 2004. Therefore, the 35 U.S.C. §112 rejection is not appropriate.

Based on these remarks, Applicants believe the Office Action of February 28, 2005 has been responded to in full, and that claims 1-22 are allowable. If Examiner has any questions regarding the case, Examiner is invited to contact Applicants' undersigned representative at the number given below.

Respectfully submitted,

Sharon C. Devereaux et al.

Date: 4/26/05

By: 

Susan Yee, Reg. No. 41,388  
Carr & Ferrell LLP  
2200 Geng Road  
Palo Alto, CA 95054  
Phone: (650) 812-3400  
Fax: (650) 812-3444